IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 408 of 2004

VALI MOHAMMED
V/S
SMT.SARLA SHARMA

Mr. SHAMBHOO SINGH, for the appellant / petitioner

Date of Order : 8.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Both the learned courts below decreed the plaintiff's suit for eviction from the suit premises on the ground of reasonable and bonafide necessity, deciding the question of comparative hardship and partial eviction also against the appellant. The plaintiff is said to be requiring the shop for opening clinic by her husband, who is doctor, and there is no other suitable accommodation available with plaintiff for the purpose. Both the courts below after appreciating the evidence, have found all three elements in favour of landlord by deciding issue no.1,2 and 3 in favour of plaintiff.

Heard learned counsel for the appellant at length, and perused the findings of both the learned courts below. I find that the findings recorded by both the courts below, on the question of reasonable and bonafide necessity of the plaintiff, comparative hardship and partial eviction are pure findings of fact, which are not shown to be vitiated on any of the grounds available under Sec. 100 CPC. Since no other argument was raised, it cannot be said that the appeal involves any substantial question of law. The same is, therefore, dismissed summarily.

However, at the request of learned counsel for the appellant, the appellant is granted six months time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of

the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff, and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Srawat/